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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

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MUR 6261
DATE COMPLAINT RECEIVED: 03/11/10
DATE OF NOTIFICATION: 03/16/10
LAST RESPONSE RECEIVED: 04/16/10
DATE ACTIVATED: 04/27/10
EXPIRATION OF SOL: 03/11/14¹

COMPLAINANT: Donald Mark Garringer

RESPONDENTS: Hoosiers Supporting Buyer for Congress and
Douglas E. Raderstorf, in his official capacity as
treasurer

Congressman Stephen Buyer

Frontier Foundation, Inc.

Storm Chasers PAC and Stephanie Mattix², in her
official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:** 2 U.S.C. § 434(b)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b

INTERNAL REPORTS CHECKED: FEC Database

FEDERAL AGENCIES CHECKED: _____

¹ The complaint does not allege a specific timeframe during which the potential violations are alleged to have occurred. Therefore, we are treating the statute of limitations as being on a continuing basis such that there are no immediate concerns regarding the expiration of the statute of limitations.

² Although the caption of the complaint names Ms. Mattix, our reading of the text of the complaint suggests that the allegations are with regard to her capacity as treasurer of Storm Chasers PAC and as an employee of the Committee and the Foundation.

I. INTRODUCTION

MUR 6261 involves allegations that two organizations associated with Congressman Stephen Buyer ("Buyer"), Frontier Foundation, Inc. ("Foundation"), a section 501(c)(3) organization and Storm Chasers PAC ("Storm Chasers"), a non-connected federal political committee operating as a leadership PAC, made excessive and/or prohibited contributions to subsidize Buyer's principal campaign committee, Hoosiers Supporting Buyer for Congress and Douglas E. Raderstorf, in his official capacity as treasurer ("Committee"), and/or Buyer's lifestyle. According to the complaint, this was accomplished by the Committee, Storm Chasers and the Foundation commingling their affairs and activities. The complaint further alleges that the Foundation operates solely for Buyer's personal and political benefit, as it had failed to operate for its stated purpose of helping needy students once its endowment reached \$100,000. As support, the complaint alleges that the Foundation and Storm Chasers made disbursements for office space shared by the Committee based on information that the entities had the same office address and telephone numbers. It also alleges the three entities shared an employee, Stephanie Mattix, and that the Foundation and Storm Chasers subsidized her work for the Committee.

Buyer, the Committee and Mattix filed a joint response. The Foundation filed a separate response. Storm Chasers did not provide a response. In the responses, Respondents maintain that the three entities are operated separately and distinctly from one another, and that no disbursements by the Foundation or Storm Chasers constituted

an in-kind contribution to the Committee.³

Based on the available information, it does not appear that the Foundation made any prohibited contributions or that Storm Chasers made any excessive in-kind contributions to Buyer or the Committee, or that Buyer or the Committee accepted any prohibited or excessive in-kind contributions. Therefore, we recommend that the Commission find no reason to believe that the Respondents violated the Act in connection with this matter, and close the file.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Buyer has represented Indiana's 4th Congressional District since 2002. In 2003, the Foundation was formed in the state of Indiana to provide scholarships to "needy graduating high school students of Indiana's 4th Congressional district," and to "provide emergency relief to individuals who suffer losses due to casualty, catastrophe, or acts of God."⁴ Foundation Response, Exhibit A. The Foundation has yet to distribute any scholarships, but states it plans to do so once it raises an endowment of \$1 million. Foundation Response at 2. While it appears that Congressman Buyer does not serve as an officer or a board member of the Foundation, he has actively supported it in fundraising efforts. See Foundation Response, Affidavit of Maria Vander Sande (President of Board of Directors).

³ Respondents note that the Complainant relies upon an ethics complaint filed by Citizens for Responsibility and Ethics (CREW) with the Office of Congressional Ethics (OCE) against Congressman Buyer. According to Respondents, on March 26, 2010, the Board of the OCE dismissed CREW's ethics complaint and closed the matter with no further action. Media reports indicate that OCE did, in fact, dismiss the complaint, but did not provide details as to the reasons for the dismissal.

⁴ On September 29, 2004, the Foundation applied to the IRS for Federal recognition of its tax exempt status as a private foundation and its application was approved in 2005. Foundation Response at 3.

On July 29, 2002, Storm Chasers, registered with the Commission as an unauthorized, non-party, non-qualified political committee, of which Buyer is the Honorary Chairman. Joint Response at ¶ 3. At different times, all three organizations shared common addresses at 200 North Main Street, Monticello, Indiana, and 103 West Broadway, Monticello, Indiana, but have not done so since October 2009, when the Foundation relocated to a different address. Joint Response at ¶ 4.

The Respondents acknowledge that the Committee, Foundation and Storm Chasers employed Ms. Mattix at various times in various paid and unpaid capacities. Joint Response at ¶ 9 and Foundation Response at 6. While it does not appear that Storm Chasers compensated Ms. Mattix in connection with her treasurer duties, it paid her for the provision of "fundraiser consultant" services on its behalf. See Commission disclosure reports. The Foundation also compensated Ms. Mattix for her position as secretary/treasurer, and the Committee paid her for the provision of "fundraiser consultant" services. Joint Response at ¶ 9, Foundation Response at 6, Commission disclosure reports and IRS filings.

The complaint alleges that the rental payments made by the Foundation for the Committee's office space, and the Foundation's salary payments to Mattix for work performed to benefit Buyer and the Committee constitute a prohibited in-kind contribution made and accepted in violation of 2 U.S.C. § 441b. The complaint is less clear as to the alleged violations by Storm Chasers, but it appears to suggest that alleged shared rental payments and salary disbursements to Ms. Mattix by Storm Chasers were excessive in-kind contributions made to and accepted by the Committee in violation of

2 U.S.C. § 441a(a) that the Committee and Storm Chasers failed to disclose in violation of 2 U.S.C. § 434(b).

1. Office rental

As support for the allegation that the Committee, Foundation and Storm Chasers commingled their activities and affairs in order to support Buyer's campaign and lifestyle, the complaint states that the Committee, Foundation and Storm Chasers all reside at the same physical address, and the Committee and Foundation are listed on some IRS forms as having the same telephone number. In its response, the Committee states generally that "[e]ach entity operated with its own lease, office space, bank accounts, credit cards, business ledgers, accounting systems, internal controls, payroll records, computer hardware and software, storage, phone, supplies, legal counsel, and accounting service." Joint Response at ¶ 7. Respondents specifically deny that any of the three entities paid any portion of the rent for the office space that any other entity leased at the same addresses, and provided their separate telephone numbers. Joint Response at ¶ 4 and Foundation Response at 6.

According to the Responses, during the tenancy at the 200 North Main Street, Monticello, Indiana location, the Foundation paid \$200 per month as did Storm Chasers, and the Committee paid \$250 per month. Joint Response at ¶ 4 and Commission disclosure reports. Upon their 2009 relocation to 103 West Broadway, Monticello, Indiana, the Foundation paid \$300 per month, Storm Chasers paid \$300 per month, and the Committee paid \$850 per month. *Id.* In October 2009, the Foundation relocated to a different location while the Committee and Storm Chasers remained at the 103 West Broadway address. *Id.* The Foundation also noted in its response that it was "not aware

1 of the specific terms of any agreement for the use of office space between either Ms.
2 Vogel [landlord] or Mr. Johnson [landlord], and Congressman Buyer's campaign or the
3 Storm Chasers PAC" but that it did not pay rent on behalf of Buyer's campaign or Storm
4 Chasers. Foundation Response at 5 and Affidavit of Maria Vander Sande.

5 The complaint based its allegation of shared telephone numbers on information
6 located in some of the IRS filings by the Foundation. Foundation Response Attachments
7 (Application for Recognition of Exemption and 2003 990-EZ filing). Respondents assert
8 that the listing of the Committee's telephone number on some IRS forms as the
9 Foundation's contact number was a clerical error. Joint Response at ¶ 7 and Foundation
10 Response at 6. They state that Mattix inadvertently provided the IRS with the
11 Committee's telephone number rather than the correct contact number for the
12 Foundation. *Id.* Thereafter, the template for the cover page of each IRS 990 form was
13 used repeatedly in error by the accounting firm when filing annual reports for the
14 Foundation. *Id.* The Foundation points out that its tax return for 2004 reflects two
15 telephone numbers for the organization. *See* Joint Response at 6 and Attachment (Form
16 990-PF filing for 2004.) The incorrect telephone number of (574) 583-9843 is noted on
17 the front page under B and the correct telephone number of (574) 870-4565 is reflected at
18 Part XV, Line 2a. *Id.*

19 2. Stephanie Mattix's Salary

20 The complaint alleges that the Committee, Foundation and Storm Chasers each
21 employed Stephanie Mattix, but that her employment by the Foundation was "ghost
22 employment to the extent that any services rendered by Mattix to" the Foundation "were
23 in furtherance of the political campaigns and ambitions of Buyer as Congressman of

1 Indiana's Fourth Congressional District." Complaint at ¶ 12. It further alleges that the
2 stated purposes of the Foundation and Storm Chasers were a "fraud and sham."
3 Complaint at ¶ 11. In support, the complaint asserts Mattix claimed on the IRS forms to
4 have worked 20 hrs/week (1,000 hrs per year) for the Foundation up until July 31, 2009,
5 during which time she also worked for the Committee. *Id.* at ¶ 9. When compensation
6 for Mattix's employment by the Foundation was discontinued on July 31, 2009, her
7 compensation for employment by the Committee went from \$873 per month to \$1,574
8 per month. *Id.*

9 Respondents maintain that Mattix was a salaried part-time employee for both the
10 Committee and the Frontier Foundation until July 31, 2009. Joint Response at ¶ 9 and
11 Foundation Response at 6. Upon Mattix's departure from her salaried position with the
12 Foundation, she increased her work duties and responsibilities with the Committee which
13 resulted in an increase in her part-time salary from \$873 per month to \$1,574 per month.
14 Joint Response at ¶ 9. In addition, the Joint Response states that its disclosure reports
15 clearly indicate a flux in Mattix's salary during peak campaign season which was due to
16 her additional duties and responsibilities during those times. *Id.* The Respondents assert
17 that Mattix was legitimately compensated for her work on behalf of the Foundation and
18 the Committee, and any contention that the Foundation was compensating her for work
19 benefiting the Committee is unsubstantiated. Joint Response at ¶ 9.

20 In its separate response, the Foundation states that during Mattix's employment
21 between 2003 and July 31, 2009, she was not authorized by the Board of Directors to
22 work for any other entity during the hours she was to be working for the Foundation.
23 Foundation Response, Affidavit of Maria Vander Sande. Further, the Joint Response

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1 provides that the position held by Mattix for seven years paid \$1,000 per month, which is
2 the same amount paid to the successor employee. Joint Response at ¶ 12.

3 3. Foundation's Operation

4 The complaint asserts that the Foundation "failed to operate for its stated purpose
5 of helping needy students and does little more than pay for Congressman Buyer to play
6 golf with donors with interests before his Committee." Complaint at ¶ 6. In addition, it
7 alleges that the stated purposes for the Foundation and Storm Chasers were a "fraud and
8 sham" and that the true purpose of the organizations is to promote the political campaigns
9 of Buyer and to support his lifestyle. Complaint at ¶ 11. Complainant asserts that Buyer
10 created the Foundation for the "stated purpose of handing out scholarships to needy
11 graduating high school students of Indiana's Fourth Congressional District once the fund
12 reached \$100,000" and that the Foundation has raised more than \$880,000 -- primarily
13 from companies and trade organizations with an interest in the House Energy and
14 Commerce Committee, on which Buyer serves, yet the Foundation has not yet distributed
15 any scholarships. Complaint at ¶ 5. In response, the Foundation maintains that it has
16 operated within the IRS guidelines for a section 501(c)(3) organization. Foundation
17 Response at 7. The Foundation asserts that the complaint incorrectly states that it was
18 formed to distribute scholarships once it reached a fundraising goal of \$100,000.
19 Foundation Response at 2. According to the Foundation, in its IRS application for
20 Federal recognition of its tax exempt status, it stated the following regarding the activities
21 of the organization:

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1 Frontier Foundation, Inc. was formed on June 13, 2003 to
2 address the fact [that] young, educated individuals leaving the state of
3 Indiana upon graduation from college. The organization will provide
4 scholarships for students pledging to work in Indiana for a period of time
5 after graduation. **The organization will not award scholarships until**
6 **\$1,000,000 has been raised through donations.** (Emphasis added)
7

8 Foundation Response at 3.

9 The Foundation states that it has raised approximately \$880,000 and that it
10 intends to distribute scholarships once it has raised \$1,000,000. Foundation Response at
11 3. The Joint Response adds that, upon reaching its "originating goal of \$100,000, the
12 Foundation Board realized this was an insufficient sum to be self-sustaining; therefore,
13 the endowment goal was raised to \$1,000,000." Joint Response at ¶ 6. Further, it states
14 that "[b]uilding an endowment is an acceptable and appropriate business practice among
15 non-profit corporations, colleges, and universities for sustainability purposes." *Id.* In
16 addition, the Respondents assert that Buyer has reimbursed the Foundation for all travel-
17 related expenses, including lodging and golf fees associated with its fundraising events.
18 Joint Response at ¶ 6 and Foundation Response at 4.

19 **B. Analysis**

20 The primary issue presented by this matter is whether the Foundation and Storm
21 Chasers made excessive and/or prohibited in-kind contributions in the form of
22 disbursements for shared office space and a shared employee (Mattix) that were intended
23 to benefit the Committee.

24 Under the Act, political action committees (PACs) are allowed to contribute
25 \$5,000 annually to a candidate or his campaign committee. 2 U.S.C. § 441a(1)(C). It is
26 unlawful for any corporation, including section 501(c)(3) corporations, to make
27 contributions or coordinated expenditures in connection with a federal election. 2 U.S.C.

1 § 441b(a). Likewise, candidates and their authorized committees cannot knowingly
2 accept excessive or prohibited contributions. 2 U.S.C. § 441a(f). Treasurers of political
3 committees must disclose the total amount of all receipts including contributions and the
4 total amount of all disbursements including expenditures. 2 U.S.C. § 434(b)(2), (3) and
5 (4).

6 1. Office rental

7
8 All the available information, including the Committee's and Storm Chasers' FEC
9 and the Foundation's IRS filings, confirms that the entities made separate payments for
10 rental space. There is no available information indicating that the Foundation or Storm
11 Chasers paid any portion of the Committee's office space. That the three entities had
12 rental spaces in the same building is not sufficient information to demonstrate that the
13 Foundation or Storm Chasers is paying for any portion of the rental space occupied by
14 the Committee. Respondents have provided an adequate explanation for the Committee's
15 telephone number appearing on the cover page of the Foundation's IRS filings and
16 provided the separate telephone numbers used by the three entities.

17 2. Mattix's Salary

18 The available information indicates that Mattix was employed at various times in
19 various capacities by the Foundation, the Committee and Storm Chasers. *See*
20 Commission disclosure reports and IRS filings. The entities' disclosure reports show
21 regular monthly payments to Mattix from all three entities at certain times. *Id.* The
22 Committee's explanation for the increase in Mattix's compensation for consultant
23 services provided to the Committee as being due to her increased work responsibilities
24 and duties in connection with Buyer's re-election campaign appears reasonable. In

1 addition, the Foundation's filings confirm that the individual who replaced Mattix is
2 currently being compensated at \$1,000 per month, the same as Mattix's compensation.
3 See IRS filings. Thus, Complainant has provided no persuasive information
4 demonstrating that the Foundation or Storm Chasers compensated Mattix for work
5 performed to benefit the Committee. That Mattix was employed and compensated by the
6 three entities for various duties and responsibilities does not, in and of itself, support the
7 allegation.

8 3. Foundation's Operations

9 The complaint alleges that the Foundation has not operated for its stated purpose
10 within the IRS guidelines for a section 501(c)(3) organization. The Respondents deny
11 this allegation and counter that the Foundation has engaged in legitimate fundraising
12 efforts and fully intends to distribute scholarships once it reaches the stated fundraising
13 goal of \$1,000,000.

14 While the responses appear to present a plausible rebuttal to the complaint
15 allegation, we need not reach this issue since the Commission lacks jurisdiction to
16 consider this allegation. Therefore, we make no recommendation regarding the merits of
17 this allegation.

18 **III. CONCLUSION**

19 Based on an assortment of asserted facts, Complainant has drawn unsubstantiated
20 legal conclusions that have been sufficiently rebutted by the responses and public record.
21 The Commission has stated that "[u]nwarranted legal conclusions from asserted facts ...
22 or mere speculation ... will not be accepted as true," and that "a complaint may be
23 dismissed if it consists of factual allegations that are refuted by sufficiently compelling

evidence produced in responses to the complaint." Statement of Reasons, MUR 5141 (Moran for Congress), issued March 11, 2002.

Based on the foregoing, we recommend that the Commission: 1) find no reason to believe that the Frontier Foundation made prohibited in-kind contributions in violation of 2 U.S.C. § 441b; 2) find no reason to believe that Storm Chasers PAC and Stephanie Mattix, in her official capacity as treasurer, made excessive in-kind contributions in violation of 2 U.S.C. § 441a(a) and failed to report them as required by 2 U.S.C. § 434(b); 3) find no reason to believe that Congressman Stephen Buyer or Hoosiers Supporting Buyer for Congress and Douglas E. Raderstorf, in his official capacity as treasurer, received excessive or prohibited in-kind contributions in violation of 2 U.S.C. § 441a(f); and 4) find no reason to believe that Hoosiers Supporting Buyer for Congress and Douglas E. Raderstorf, in his official capacity as treasurer, failed to report such contributions as required by 2 U.S.C. § 434(b). We further recommend that the Commission close the file.

IV. RECOMMENDATIONS

1. Find no reason to believe that the Frontier Foundation violated 2 U.S.C. § 441b;
2. Find no reason to believe that Storm Chasers PAC and Stephanie Mattix, in her official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(a);
3. Find no reason to believe that Congressman Buyer and Hoosiers Supporting Buyer for Congress and Douglas E. Raderstorf, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f);
4. Find no reason to believe that Hoosiers Supporting Buyer for Congress and Douglas E. Raderstorf, in his official capacity as treasurer, violated 2 U.S.C. § 434(b);
5. Approve the attached Factual and Legal Analyses;

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6. Approve the appropriate letters; and

7. Close the file.

Thomasenia P. Duncan
General Counsel

Date July 26, 2010

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